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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: Notification of Permitted Ex Parte Presentation
MM Docket Nos. 92-265 and 92-266

Dear Ms. Searcy:

Viacom International Inc. ("Viacom"), by its attorneys and pursuant to Section 1.1206(a)(2) of the Commission's rules, hereby submits an original and one copy of this memorandum regarding a permitted ex parte presentation to the Commission's staff regarding MM Docket Nos. 92-265 and 92-266.

On Wednesday, March 10, 1993, at 4:30 p.m., Lawrence W. Secrest III and Philip V. Permut of this firm, on behalf of Viacom, met with John Hollar of Commissioner Duggan's staff. The discussion related to Viacom's comments and reply comments filed in response to the Notices of Proposed Rule Making in MM Docket Nos. 92-265, FCC 92-543 (rel. Dec. 24, 1992) and 92-266, FCC 92-544 (rel. Dec. 24, 1992), which sought comment on the implementation of various provisions of the Cable Television Consumer Protection and Competition Act of 1992 dealing with the development of competition and diversity in video programming distribution and carriage and the regulation of cable rates.

A copy of the attached document was presented to Mr. Hollar.

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Kindly direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Wayne D. Johnsen

WDJ/rr
cc: John C. Hollar, Esq.

[From the Denver-Rocky Mountain News, Sept. 20, 1992]

CABLE BILL: STATIC AND SNOW

Suddenly the commodity preoccupying the U.S. Congress isn't wheat or sugar or tobacco but potatoes—the variety that takes root on den couches. Hence, by a 280–128 vote, the House has approved a measure that would cap the rates cable TV companies can charge for basic service.

Under the House bill, bureaucratic fingers would be all over the fine-tuning knob. Congress not only would empower the Federal Communications Commission to set and enforce "fair" cable charges, Congress also would specify how many phone lines each cable company must dedicate to customer complaints. It would require cable operators to refine technology within 10 years so that subscribers to basic service could enjoy one "free" premium channel (e.g., HBO). Good grief. Congress doesn't regulate the Post Office this closely.

Most Congress members claim that reregulating cable, liberated from federal control in 1984, would save consumer dollars. But the FCC would set rate ceilings only for bedrock service—local commercial and public channels, plus one or two "super stations." These strictures would impel cable companies to charge fees for each of the 30 or so channels (ESPN, The Discovery Channel, etc.) that they now sell for one flat price. Some bargain. True, the feds could begin capping rate for these "second-tier" channels, too. But Washington cannot force a business to operate at a loss. Hold onto those rabbit ears, friends.

Yet one provision of the House bill makes sense—that barring local authorities from offering cable firms exclusive franchises. Such sweet deals explain cable overpricing; in towns where viewers can choose between two services, channel selection is greater and monthly charges average 25 percent less.

But one decent feature does not a whole bill redeem. President Bush should veto this cable regulation measure, which is mainly static and snow.

[From the Washington Post, Sept. 19, 1992]

UNCLE SAM IN CHARGE OF CABLE

The cable legislation approved by the House and now headed for a Senate vote calls for the federal government to step in and reregulate the industry from rates to program packaging. But this approach assumes that cable, now supplied mostly by monopolies, is a utility as necessary as electricity or telephone service. In fact, cable is a consumer option in what should become a more competitive market. This particular bill would give government a role in cable that consumers may not find so welcome over the long haul.

Forget the cable industry ads predicting that passage of the bill would send everybody's cable rates through the ceiling. Forget as well the arguments of supporters—including over-the-air broadcasters, who like a provision that would force cable operators to negotiate with them before retransmitting their signals—that the bill would force price cuts of up to 30 percent. Both sides—and we note here that The Washington Post Co. owns cable systems as well as broadcast television stations—have restore to heavy lobbying. So has the motion picture industry, which opposes the bill because Hollywood wouldn't get any cut of the royalties that broadcasters could seek from cable operators.

Under the measure, the government would set "reasonable" rates for what it would define as "basic" programming, control prices for installation and equipment, require efficient customer service and force cable operators to equip all subscribers for channel selections that now are sold as packages of channels. The result of all these requirements is not more competition; its more likely to be cost-cutting by eliminating cable programming or even entire channels.

The effort to control gouging by cable operators should focus on increasing competition, not on heavy reregulation. Until competitors do materialize, some determination of a reasonable rate of return for certain basic cable service is a legitimate legislative pursuit next year. This bill goes overboard.

[From the Baltimore Sun, Sept. 19, 1992]

DISTORING THE CABLE TV BILL

The battle now reaching a climax in Congress over re-regulating the cable television industry is a classic example of a bill intended to aid consumers that has almost been submerged by interest groups fighting each other for competitive advantages.

The bill started as a consumer protection measure. Congress lifted controls on cable TV operations in 1984. Charges promptly skyrocketed in many areas. Often service quality dipped almost as quickly. The cable TV operators gained a reputation for concentrating on expansion and amalgamation but neglecting their captive audiences. The bill would restore price controls on cable TV and impose quality standards for service. It would also ease the way for competitors in the 97 percent of areas that are saddled with monopoly franchises.

So far so good. Even some in the cable TV industry could live with that. But the bill, passed Thursday in the House of Representatives and due soon for a final vote in the Senate, goes father. It would force the cable systems to negotiate with the over-the-air broadcasters for the right to carry their signals on their systems. Now the cable systems are required to carry local broadcasts but need not pay for them. The bill would also force the cable companies to sell programming that it has developed for its own use to potential competitors.

These latter two provisions have the cable industry howling. It had howled so loudly and, in some cases, so irresponsibly that it has damaged its own case. The cable industry contends the new regulations would increase customers' bills by perhaps $4 a month. No one knows what, if anything, cable systems would have to pay broadcasters for the rights to carry their signals. Maybe nothing. The broadcasters and cable systems need each other: Cable would be hard to sell without network and local over-air programming, and broadcasters need to assure their advertisers the programs they pay for are reaching the whole market.

With House passage, the battle shifts to the Senate. The cable industry is lobbying furiously to get enough Senate votes to sustain a promised veto by President Bush. It's getting help from Hollywood, where movie producers have decided that if cable must pay for over-air material, they should get a cut of the programs they produced, too.

While the bill's sponsors still point to this protection for consumers as the measure's main features, it has in fact been encrusted with provisions that could mean billions of dollars to broadcasters and Hollywood producers. If the Senate fails to muster a veto-proof majority, the bill's original supporters ought to start all over next year, keeping the new proposal strictly focused on the consumer's interests.

[From the Wyoming Eagle, Sept. 17, 1992]

CABLE BILL WOULD END UP HURTING CONSUMERS

It's been difficult to turn on a television set in recent days without being bombarded by commercials both for and against the cable reregulation bill now before Congress. With all of the hype, it's difficult to look beyond the emotional appeals and see how the legislation would truly impact both the industry and the consumers' wallet.

The cable industry, arguing for deregulation eight years ago, claimed that regulation had kept rates artificially low. As a result, since the industry won that battle in Congress, cable rates have risen three times faster than inflation.

Cable critics charge that for the extra money, many consumers have received shoddy service. The industry counters that it has invested in both improved equipment and programming.

In a sense, both claims have some validity. However, arguing about who's right and who's wrong in this controversy really does not get to the heart of the matter: what action will best protect the consumer in the future?

The cable bill approved by a House-Senate conference committee was originally designed as a pro-consumer piece of legislation that would hold down rates. However, it has turned into a mishmash of federal regulations that could easily lead to precisely what the cable industry has warned customers about in its campaign against the bill: higher rates.

Estimates by the Office of Management and Budget, the Department of Commerce and the industry itself indicate that the bill's passage would see cable bills rise between $2 and $4 per month. The increase would be justified by the cost of the bill's provision that cable operators would have to pay local broadcast TV stations for using their signals. The cost would simply be passed on to cable customers.

Mr. KERRY. Mr. President, section 19 of the conference report directs the FCC to establish regulations to limit discrimination between satellite cable programmers and satellite broadcast programmers on the one hand, and multichannel video programming distributors on the other. Subsection 2(B)(ii) of section 19 provides that in setting its regulations the FCC shall not prohibit a programming vendor from establishing different prices, terms and conditions to take into account actual and reasonable differences in the cost of creation, sale, delivery, or transmission of satellite cable programming or satellite broadcast programming. Am I correct in understanding that as used in subsection 2(B)(ii) the cost of creation, sale, delivery or transmission of programming refers to costs incurred at the multichannel video programming distributor's level as well as at the program vendor's level?

Mr. INOUYE. That is correct.

LOW-POWER TELEVISION MUST CARRY AGREEMENT

Mr. FORD. Mr. President, I would like to commend my colleague, the Senator from Hawaii for his efforts in moving cable legislation this year. I am unaware of any legislation that has stirred up so much activity and debate. Throughout the long hearings, negotiations in committee, on the Senate floor and in the conference committee the Senator from Hawaii is the glue that held this all together. He is very aware and has been most helpful on an issue